

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Reconsideration of Implementation of the  
AM Expanded Band Allotment Plan

**MEMORANDUM OPINION AND ORDER**

Adopted: September 1, 1995; Released: September 6, 1995

By the Commission: Commissioner Barrett concurring  
and issuing a statement.

1. In *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), ["AM Improvement Order"], recon. granted in part and denied in part, 8 FCC Rcd 3250 (1993) ["Reconsideration Order"], the Commission adopted measures to facilitate an overall improvement and revitalization of the AM broadcast band as a whole and to effectuate the necessary development of the spectrum between 1605 and 1705 kHz. This spectrum is referred to as the "Expanded Band." On October 14, 1994, the Mass Media Bureau released a Public Notice (Mimeo

No. 50218; DA 94-1154) entitled "Federal Communications Commission Announces Allotment Plan for Expanded AM Band."

2. The Allotment Plan identified the stations that were eligible to apply for authorizations for specific expanded band frequency allotments. Currently under consideration are nineteen petitions for reconsideration of the Allotment Plan and an application for review of an October 18, 1994 letter of the Chief, Audio Services Division, Mass Media Bureau, which found station KOLM(AM), Rochester, Minnesota ineligible to migrate to the AM expanded band.<sup>1</sup> As set forth below, certain petitions reveal that errors existed in the Commission's AM Engineering Database which was used to generate station interference improvement factors and the resulting Allotment Plan.<sup>2</sup> It further appears that certain database information upon which federal travellers information stations were protected in generating the Allotment Plan was also in error.<sup>3</sup> Finally, certain petitioners raise other questions and concerns regarding other aspects of the processing procedures implemented by the Commission and the Bureau in generating the Allotment Plan.

3. We have verified that certain database errors did in fact exist. Further, every correction to database information has the potential to affect each of the improvement factors and station allotments which were accorded the migrating stations. Accordingly, the improvement factor ranking of stations and the Allotment Plan must be rescinded. We take this opportunity to set forth clearly and in detail the procedures and parameters we intend to use to generate corrected improvement factors and a revised allotment plan. We will afford interested parties an opportunity to

<sup>1</sup> The application for review was filed November 17, 1994 by Olmsted County Broadcasting Company, licensee of Station KOLM, Rochester, Minnesota (KOLM). Petitions for reconsideration were filed by: (1) New Castle Broadcasting, Inc., licensee of Station WAMS, Wilmington, Delaware (WAMS); (2) Eastern Media, Inc., licensee of Station WESO, Southbridge, Massachusetts (WESO); (3) Faircom Flint Inc., licensee of Station WFNT, Flint, Michigan (WFNT); (4) Sunrise Broadcasting of New York, Inc., licensee of Station WGNV, Newburgh, New York (WGNV); (5) Maranatha Ministries Foundation, Inc., licensee of Station WGYJ, Atmore, Alabama (WGYJ); (6) First State Broadcasting, Inc., licensee of Station WKEN, Dover, Delaware (WKEN); (7) Main Street Broadcasting Co., Inc., licensee of Station WLNG, Sag Harbor, New York (WLNG); (8) The Pinebrook Foundation, licensee of Station WPEO, Peoria, Illinois (WPEO); (9) WRJC, Inc., licensee of Station WRJC, Mauston, Wisconsin (WRJC); [an "Opposition to Petition for Reconsideration" was filed by Armada Broadcasting Company, Inc., licensee of Station WNNO, Wisconsin Dells, Wisconsin]; (10) Triad Network, Inc., licensee of Station WWBG, Greensboro, North Carolina (WWBG); (11) Milstar Broadcasting Corp., licensee of Station WXCT, Hamden, Connecticut (WXCT); (12) River City Communications, Inc., licensee of Station WXKN, Newburg, Kentucky (WXKN); (13) KHPY Hispanic Radio, Inc., licensee of Station KHPY, Moreno Valley, California (KHPY); (14) Mt. Wilson FM Broadcasters, Inc., licensee of Station KOJY, Costa Mesa, California (KOJY); (15) Franklin Communications, Inc., licensee of Station KSPL, Palm Springs, California (KSPL); (16) Wisdom Broadcasting Co., Inc., licensee of Station KRML, Carmel, California (KRML); (17) La Knave KBOR, Inc., licensee of Station KBOR, Brownsville, Texas (KBOR); (18) WPPC-AM Radio Felicidad, licensee of Station WPPC, Penuelas, Puerto Rico (WPPC); and (19) WPPA Radio, licensee of Station WPPA, Chester, Pennsylvania (WPPA). Supplements were filed by WKEN and KOJY. The requests for reconsideration filed by WPPA on December 5, 1994 and WPPC on December 12, 1994 are untimely and are hereby dismissed.

<sup>2</sup> In a Public Notice "Federal Communications Commission To Open Filing Window" on AM Expanded Band Applications," released April 15, 1993, the Bureau specified that it would use the AM Engineering Database, updated as of June 30, 1993 as the "date certain," in the computation of improvement factors for stations desiring to migrate to the expanded band. In a Public Notice (Mimeo No. 40831) "FCC Announces the Interference Improvement Factors for Stations Which Have Petitioned to Migrate to the Expanded Broadcast Band," released on December 3, 1993, the Bureau announced the interference improvement factors for 688 stations which were found eligible to migrate to the expanded AM broadcast band. In that Notice, the Bureau explained that the improvement factor is "the area of interference caused all other stations divided by the station's interference-free service area. The larger the improvement factor, the greater the reduction of interference in the existing band if the station causing the interference migrates to the expanded band." See also, *Polnet Communications, Ltd.*, 9 FCC Rcd 6129 (1994).

<sup>3</sup> Travellers information stations are low power AM stations (up to 10 watts) authorized under Part 90 of the Commission's Rules. Similar stations operated by Federal agencies (Federal travellers information stations) are licensed by the National Telecommunications and Information Administration ("NTIA") and are not under the jurisdiction of the Commission. See Section 305(a) of the Communications Act of 1934, as amended and Sections 2.105 and 2.106 of the Commission's rules. In the *Reconsideration Order*, 8 FCC Rcd at 3257, we stated: "We are sensitive to concerns that public reliance on [travellers information stations] requires that such service not be subject to undue disruption. Therefore, in a future proceeding, we will reexamine the status of travelers information stations and explore the feasibility of a primary allocation for [travellers information stations] at 1710 kHz. Federal government [travellers information station] operations will continue on 1610 on a co-primary basis until they can be reaccommodated in an orderly fashion on an alternative frequency."

comment on these matters. Once all comments are considered, we will take any further action that may be appropriate based on the comments. The relevant computer programs will then be run and revised improvement factors and a revised allotment plan will be issued. It will be only after any reconsideration petitions are acted on and the revised allotment plan becomes a final Commission action that the Commission will enter the final allotments into the Commission's AM Engineering Database. At the time the final allotment plan is released, the Commission will individually notify each licensee that was allotted a frequency and call for construction permit applications to be filed by the successful licensees. The application procedures announced in the October 14, 1994 Public Notice will then be followed.

4. *Background.* The Commission limited initial eligibility to occupy the expanded band to existing AM licensees, concluding that allowing new applicants in the expanded band would not achieve the level of interference and congestion reduction in the existing band which the Commission thought desirable to improve the competitive standing of AM broadcasters. See *AM Improvement Order* at 6306-6308. The Commission also set forth a summary of the steps we would take to develop and implement the Allotment Plan as follows: (a) open a window for existing AM stations to file petitions to migrate to the expanded band; (b) extract relevant data concerning these stations from the petitions and enter the information into the AM database; (c) rank all such stations based on established priority groups and interference improvement factors (the more interference a station causes and receives, the higher its ranking, i.e., migration is based on the degree to which the new frequency allocation will reduce interference in the existing band); (d) produce an allotment plan which identifies stations eligible to migrate; (e) call for applications to migrate and issue a cut-off list (subjecting applicants to petitions to deny, but not competing applications), and (f) issue construction permits and licenses where appropriate. *Id.* at 6316-6319. To date, the process has produced the Allotment Plan which is now before us on reconsideration.

5. *AM Database.* The Bureau opened a filing window from May 3, 1993 to June 30, 1993 for existing AM stations to file petitions to migrate to the expanded band and specified that for the purposes of using a central data source and fixing an effective date with respect to database information, the Bureau would use the AM Engineering Database containing all Commission actions as of June 30, 1993. In response to this notice, several parties pointed out

specific errors that existed in the database and after these errors were verified, these and other errors discovered by the Commission's staff were corrected.

6. In spite of the Bureau's making every attempt to correct this database and assure its accuracy, two petitioners point to other inaccuracies which we have verified still existed when the Allotment Plan was generated. Specifically, WPEO, Peoria, Illinois notes that although Station WBCI, Normal, Illinois is listed in the database, it was off the air and "does not exist" and should not be permitted to migrate as it causes no interference. Furthermore, WPEO contends that the inclusion of WBCI potentially affects WPEO's interference ranking factor. We have verified that WBCI's licensee forwarded its license for cancellation in 1990. The database did not reflect this. It has now been corrected. WXCT, Hamden, Connecticut, maintains that it was erroneously classified as a daytime-only station and thus received a lower ranking than it should have received. WXCT's status has been verified. It has been reclassified and will be re-ranked as a full-time station. The corrected AM Engineering Database ("June 30, 1993-A database") has now been made a matter of public record and for ease of reference, has been associated with MM Docket 87-267, the Expanded Band rulemaking proceeding.<sup>4</sup>

7. *Federal Travellers Information Station Database.* As previously noted, federal travellers information stations licensed by NTIA have a co-primary status with the AM expanded band stations. This entitles federal travellers information stations, authorized first-in-time, to receive protection from interfering expanded band allotments.<sup>5</sup> NTIA had provided the Commission with database information on such stations. Nevertheless, NTIA has informed the Commission that the October 14, 1994 Allotment Plan resulted in the allocation of two proposed expanded band AM stations that will cause harmful interference to existing federal travellers information stations that should have been protected on a co-primary basis. We have determined that an error in reading the federal travellers information stations database resulted in the exclusion of two federal travellers information stations. That error has been corrected.

8. Because a reliable AM database is critical to developing an appropriate allotment plan, the Commission will entertain requests to further correct the June 30, 1993-A database for thirty days from the date of the release of this order. Such requests should only address corrections that would have been appropriate as of June 30, 1993. After the thirty-day correction period, no further requests for change will be accepted, and the database will be "frozen" and used as corrected. This final corrected database will be the

<sup>4</sup> This docket file is available for public inspection in the Public Reference Room (Room 239, 1919 M St., N.W., Washington D.C.) and copies of this material may be obtained from the Commission's duplicating contractor, International Transcription Services, Inc., (202) 857-3800. The corrected database will be available in computer readable form by special order from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5288 Port Royal Road, Springfield, Virginia 22161. A printed copy of the June 30, 1993-A database will also be associated with MM Docket 87-267 and made available for public inspection.

<sup>5</sup> Because the Commission and NTIA share joint jurisdiction over federal travellers information station frequencies, the Bureau and NTIA negotiated both the protection standards to be

applied to co-primary federal travellers information stations and the date the protections standards would become effective. To implement first-in-time protection, an agreement was reached that only the federal travellers information stations authorized as of August 4, 1994 will be protected. We are associating a printed copy of the relevant federal travellers information stations database with MM Docket 87-267. Computer readable copies of this database may also be specially ordered from NTIS. See Note 4, *supra*. We are also placing a synopsis of all contacts between the Commission and NTIA in the Commission's next Ex Parte Presentations Public Notice, to inform all interested parties of these contacts, pursuant to Section 1.1206 of the Commission's rules. Further contacts will also be disclosed in a like manner.

June 30, 1993-B database and will be used to generate the revised improvement factor rankings and revised allotment plan.

9. Since June 30, 1993 has been fixed as the date certain with respect to the database, any changes to any AM station granted after that date will not be entered into the June 30, 1993-B database and affect the improvement rankings. If such changes were allowed, all petitioners' rankings would be subject to recalculation whenever any change were made. Thus, fixing June 30, 1993 as a fixed date certain results in administrative finality and basic fairness in the allotment procedure. In this regard, a licensee requesting to migrate to the expanded band will not be allowed to improve its position by any change made subsequent to June 30, 1993. Cf. *Alexander S. Klein, Jr.*, 86 FCC 2d 423, 434 (1981) [applicant not given additional comparative credit for amendments after period allowed for filing amendments as a matter of right had expired].

10. Thus: (a) stations cancelled subsequent to June 30, 1993 will remain in the interference calculations for interference improvement purposes, but will not be allotted an expanded band frequency; (b) where a daytime station has turned in a nighttime construction permit subsequent to June 30, 1993, it will be credited with the daytime improvement factor only and be grouped as a daytime station, even though the facilities authorized in its nighttime construction permit will be used to calculate the nighttime improvement factor, and (c) where a station is eligible to migrate to the expanded band solely based on a construction permit that is cancelled after June 30, 1993, the station's construction permit parameters as of June 30, 1993 will be used in the improvement factor calculation, but the station will not be issued an expanded band allotment.

11. WESO and WXKN, in their requests for reconsideration, argue that any re-calculation of improvement factors that may have occurred prior to the release of the Allotment Plan, is contrary to the Commission's announced procedures. In this regard, as a result of the changes specified in "Database Changes: June 30 1993-A Database," the Bureau re-ran the improvement factor program immediately prior to announcing the October 14, 1994 Allotment Plan, but did not issue the results of that re-ranking. However, the revised procedures will address the concerns of WESO and WXKN. The corrections to the AM database require the recalculation of the improvement factors. Hence, the December 3, 1993 improvement factor rankings set forth in the Public Notice of December 3, 1993 must be rescinded. As noted, the improvement factors will be recalculated based on corrections that will be embodied in the June 30, 1993-B database and a public notice announcing the revised improvement factors will be issued.

12. WESO, WFNT, WGYJ, WRJC, WWBG, and KPSL assert that the Bureau did not explain its rationale nor give specific notice of the basis for their exclusion from the Allotment Plan. As indicated above, the Allotment Plan announced in the Public Notice of October 14, 1994 must likewise be rescinded. A new allotment plan will be issued based on the procedures set forth herein. This revised allotment plan will be subject to reconsideration petitions for thirty days following its release. Summary sheets of each petitioner's computer preclusion study, upon which allotment will be based, will be associated with MM Docket 87-267 and be made available for public inspection. Associating summary sheets of each applicant's computer

preclusion study with MM Docket 87-267 will furnish all applicants with adequate notice and the basis upon which specific action was taken in a specific case.

13. *Other Petitions - A Summary.* The remaining petitions that have been filed address concerns relating to the factors we used in determining whether a specific licensee was entitled to an allotment. Specifically, as set forth below, several petitioners contend that they were not properly apprised as to how the Commission would treat agreements with foreign governments and further contend that the manner in which these provisions were treated was inappropriate. One petitioner argues that conflicts with a federal travellers information station should not preclude an expanded band allotment. Some petitioners argue that because they were ranked higher than others who received allotments, they should have received an allotment. Finally, several other petitioners raise a number of issues that amount to untimely requests for reconsideration of the underlying AM Expanded Band rulemaking proceeding itself.

14. *International Agreements.* WFNT and KPSL argue that conflict with the United States-Mexican agreement or the United States-Canadian agreement relating to the use of expanded band frequencies should not preclude an AM expanded band allotment and that conditional allotments could be issued pending further renegotiation of such agreements. Clearly the Commission must abide by all international agreements in existence at the time of the development of the allotment plan. In developing the expanded band, we ran a "test run" or "sample allotment plan" in the rulemaking, and we put petitioners on notice that we "will develop an official allotment plan using the same method employed to develop the sample allotment plan." *AM Improvement Order*, 6 FCC Rcd at 6315. "The purpose of the sample allotment plan was to illustrate the methods that would be used to create the final plan and to receive beneficial comments to guide us in establishing the process for creating the final plan." *Id.* at 6312-13. Deviations from the sample allotment plan were noted. Specifically, we stated that "International allotment prioritization criteria was suppressed for the sample plan," so that the Commission did not consider international agreements in developing the sample plan. See *AM Improvement Order*, Appendix D, *Id.* at 6355-6393. We also noted that:

... there are still some uncertainties to be resolved regarding use of the expanded band in international border areas. Work continues on bilateral negotiations to finalize agreements on this matter. However, parties are advised that the sample allotment plan being presented is subject to possible revisions, particularly in border areas.

*Id.* at 6313.

15. Moreover, the public interest requires that the resultant allotment plan not be subject to future uncertainties. The AM expanded band allotment process seeks to improve the AM band as a whole rather than having its primary focus on individual allotments. As explained in the Public Notice released August 18, 1993 (Mimeo No. 34479): "Because the optimization routines in the allotment program continually change a station's allotted frequency, no frequency assignments will be available until the program has calculated a complete solution" [emphasis added]. Thus, under this approach, there is no effective way to reserve an

allotment until the uncertainty is resolved. Because every allotment can potentially affect the grant or denial of all lower ranked petitioners, allotments cannot be subject to any kind of future approval or conditioned upon future negotiations with foreign governments. Accordingly, the requests of WFNT and KSPL to make the allotment process subject to future international negotiation will be denied.

16. Under an "interim working agreement" with Canada,<sup>6</sup> each country grants the other priority in the use of five expanded band channels within 500 km of the border. That is, the United States may assign stations on its five channels - 1620 kHz, 1640 kHz, 1660 kHz, 1680 kHz, and 1700 kHz - to any communities within 500 km of the border without concern for co-channel interference to or from Canadian stations. A reciprocal arrangement applies to the other five channels on which Canada has priority. Essentially this precludes the United States, at least for the time being, from making assignments on the five Canadian channels to United States stations located within 500 km of the border.

17. The licensed WKEN transmitter site is 496 km from the nearest official border point; some 4 km short. WKEN argues that since its nearest border point with Canada falls over water, the United States should seek to revise the agreement so that the border point for expanded band allotment purposes is moved to a landfall location within Canada. If the landfall site were used, the WKEN transmitter site would be more than 500 km from the border and therefore not automatically precluded from the five Canadian channels.

18. We will grant WKEN the relief it requests, but not for the reason it suggests. In our Canadian border preclusion studies, we have used the official border coordinates in the FCC United States-Canada data point file. As correctly noted by WKEN, in the Great Lakes region, the official border point sometimes falls over water. The "interim working agreement" with Canada permits the use of land mass and islands for determining the Canadian border "preclusion zone," within which expanded band frequencies cannot be allotted. For most of the country, there is no difference between using the official border and the actual land mass. However, when the border point passes through the Great Lakes, the use of the land mass and islands rather than the official border causes a small shift in the location of the outer edge of the zone. We have examined this shift to determine if any stations might be affected. In this regard, we identified all stations between 450 km and 500 km of the official border and determined that thirty-three stations required closer examination. The contours of these thirty-three stations were individually plotted and four stations (WKEN, WLPO, WBRT, and WONZ) were determined to be within 500 km of the border but more than 500 km of the Canadian land mass or islands.<sup>7</sup> Accordingly, before we develop the revised allotment plan, we will modify the computer software to ensure that those four stations are not automatically precluded from a possible assignment on the five Canadian channels. We em-

phasize that this action does not affect the improvement factors of those stations and does not ensure that any of those stations will receive an expanded band allotment.

19. *Federal Travellers Information Stations*. WGNV argues that the Commission erred by excluding it from an AM expanded band allotment because of preclusion by federal travellers information stations and that notice had not been afforded as to the manner in which the Commission would consider federal travellers information stations. WGNV notes that in the Bureau's Public Notice of April 15, 1993 we stated that federal travellers information stations operating on 1610 kHz will continue operating on that channel on a co-primary basis until they can be reaccommodated in an orderly fashion on an alternative frequency to be determined in a future proceeding and that potential allotment conflicts with those federal stations, we said, will be addressed on a "case-by-case basis." WGNV contends that the Bureau did not treat federal travellers information stations on a "case-by-case basis." We disagree. Rather than set aside 1610 kHz for exclusive use by federal travellers information stations, the Bureau individually examined each licensee's proposal for potential interference to each federal travellers information station. That is the "case-by-case" method employed.

20. In the alternative, WGNV suggests that the Commission make grants conditioned on a transitional co-primary use of the frequency or finding of no actual interference. To have permitted conditional allotments or the use of actual measurements to demonstrate no interference between the AM expanded band allotment and a federal travellers information station, as suggested by WGNV, would introduce an unacceptable element of uncertainty into the allotment process and the ability of licensees to finalize decisions based on their awarded allotments. Therefore, WGNV's suggestion is rejected.

21. WGNV further argues that the Commission is inconsistent in the way federal travellers information stations are treated along the Mexican border when compared to the manner in which they are treated in other areas of the United States. WGNV is correct that as a result of the Mexican agreement federal travellers information stations along the Mexican border may be subject to greater interference from Mexican expanded band allotments than United States expanded band allotments. However, the Commission affords all federal travellers information stations the same protection from United States AM expanded band allotments, no matter where they are located. The relevance of this difference to the failure of WGNV, licensed to Newburg, New York, to be awarded an allotment is not discernable. Lastly, WGNV contends that since at least one other station (WEHH, Elmira Heights-Horseheads, New York) was given a 1620 kHz allotment despite interference to a federal travellers information station on that frequency, the failure to consider Station WGNV for an allotment on 1620 kHz violates its administrative right to equal treatment for similarly situated stations. WGNV is factually incorrect because no federal travellers information station was close enough to preclude an allotment for WEHH on 1620 kHz.

<sup>6</sup> The "interim working agreement" between the Commission and the Department of Communications of Canada is formally known as the "Agreement Between the Government of Canada

and the Government of the United States of America Relating to the AM Broadcast Service in the Band 1605 to 1705 KHZ." A copy of this agreement is associated with MM Docket 87-267.

<sup>7</sup> The maps used for this process have been associated with MM Docket 87-267.

22. WAMS, WESO, WKEN, WWBG, WXKN, KHPY, and WWPC contend that the allotment process must be flawed because they did not receive an allotment even though they had received higher improvement rankings than other stations that received allotments. However, we note that interference with a local station or some other factor<sup>8</sup> may result in the exclusion of a higher ranked station. The mechanics of the selection process were explained in Appendix D of the *AM Improvement Order*, 6 FCC Rcd at 6355-6393:

Starting with the station with the highest improvement factor value, *whenever its location was not precluded from receiving an allotment*, [emphasis added] that station was assigned a frequency starting from the lowest serviceable channel (1610 kHz, if possible). To place each additional allotment, a computerized positioning routine was used to test every available combination of frequency/location distribution for all the allotments already selected until a suitable fit was obtained. This was done in order to find a location/frequency for the station in the list with the next highest improvement factor. When, despite computerized manipulation of the previously allotted stations, a location was considered for which no frequency was available, that [petitioner] was removed from further consideration and the next highest improvement factor was then subjected to the searching and adjusting process.

Thus, a higher ranked licensee may be precluded by a specific preclusion factor or higher ranked licensees in its immediate vicinity (or a combination of both), while a lower ranked licensee in another area receives an allotment. Therefore, it is possible that a station ranked 50 in the New York metropolitan area may not get an allotment because it is specifically precluded by some factor or it is precluded by higher ranked stations in its vicinity, while a station ranked 100 in Nebraska may receive an allotment.

23. Finally, several parties raise issues that are untimely. WAMS, WKEN and KRML contend that the Commission's decision to delegate the entire allocations process to a computer program constitutes an improper delegation of authority and is a violation of Section 307(b) of the Communications Act. They contend that Congress did not delegate to a computer program the power to make allocation decisions, rather agency expertise and human discretion are necessary to ensure that the public interest is served. WWBG contends that the Commission should reconsider whether its separation requirements between stations in the expanded band are too strict because there are only four allocations in North Carolina, two in Virginia, and none in West Virginia, Tennessee or South Carolina. WPAW protests that no Pennsylvania stations were assigned an expanded band allotment.

24. WLNG also maintains that in the lower portion of the expanded band, no allotment has been proposed for Long Island, New England, or the New York city metropolitan area and that at least some daytimers, such as WLNG, should have been allowed to migrate. KOLM, in

its application for review, argues that since it is a daytimer which participated throughout the expanded band process, it should be afforded a priority if migrators finally selected in their area do not elect to tender expanded band applications.

25. The Commission fully considered the public interest in the *AM Improvement Order* and the *Reconsideration Order*. It was determined that the public interest was best served by attempting to reduce overall interference in the existing band as a whole. The time to reconsider the rulemaking has long since passed. The public interest factors were fully addressed in the rulemaking and reconsideration, and the computer program is merely the mechanical implementation of these factors. With respect to Section 307(b), because we are only moving stations from one part of the band to another, our action does not affect the overall distribution of licenses "among the several States" as addressed by the statute. Movement from one part of the spectrum to another does not create (except for a short interim period) any new station. Lastly, stations in North Carolina, Virginia, West Virginia, Tennessee, South Carolina, Long Island, New England, the New York City metropolitan area or Pennsylvania would have received allotments where there was demand for an allotment and where "its location was not precluded from receiving an allotment." See Appendix D of the *AM Improvement Order*, 6 FCC Rcd at 6355-6393 (emphasis added). Likewise, the arguments of daytime-only stations were fully addressed in the rulemaking and WLNG's and KOLM's requests are untimely. *Id.* at 6309-6312 and *Reconsideration Order*, 8 FCC Rcd at 3253.

26. *Standards to be Used for Generating Revised Improvement Factor Rankings and Revised Allotment Plan*. For the reasons set forth above, and after consideration of the matters raised in the petitions for reconsideration and application for review, we believe that the standards used to implement the Allotment Plan were proper and appropriate. The only deviation from the October 14, 1994 Allotment Plan is that we will now consider potential allotments within a radius of 225 km from the allotment center points negotiated with Mexico, instead of 45 km, because that increase in flexibility is now permitted under the United States-Mexican agreement. This addresses and resolves the concerns of KOJY and KHPY, both of which will not now be precluded from an allotment because of the Mexican agreement. As set forth below, we identify and clarify these standards and are affording all interested persons thirty days from the release of this order to comment thereon. Thus the standards proposed to be used to generate the revised improvement factor rankings and revised allotment plan are:

(A) The transmitter site coordinates for all licensed stations (or construction permits, if applicable) will be used for all distance calculations in accordance with procedures followed in the sample allotment plan. See, *AM Improvement Order*, Appendix D, 6 FCC Rcd at 6355-6393.

<sup>8</sup> In developing the Allotment Plan, licensees not receiving an allotment were precluded by one or more of the following factors: (1) the Canadian agreement; (2) the Mexican agreement; (3) the agreement between the United States and other coun-

tries in Region 2; (4) interference to federal travellers information stations; (5) harmonic frequency relationships with existing stations; (6) adjacent channels in the existing band; or (7) preclusion by stations of higher ranking.

(B) Provisions in international treaties and agreements, federal travellers information station interference, harmonic frequency relationships with existing stations, existing stations on 1590 kHz and 1600 kHz, and stations with higher interference factors, will be treated as preclusion factors in order to further the principles of certainty and timely implementation of the AM expanded band. Specifically:

1) Three international agreements (Region 2, Canadian, and Mexican) affect the allotment of expanded band stations. Section 73.28(a) of the Rules states that the Commission will not make any assignment that does not conform to international requirements and restrictions on spectrum use. Therefore, in the United States-Canadian and United States-Mexican border areas, certain frequencies may not be available for domestic assignment in order to fulfill the United States' treaty commitments. In South Florida, Puerto Rico and the US Virgin Islands, frequency allotments are restricted to those specified in the Region 2 treaty covering the expanded AM Band and stations in those regions will only be assigned on the frequencies permitted by the treaty.

2) Existing federal travellers information stations operating on 1610 kHz have co-primary status with expanded band allotments. Therefore, federal travellers information stations authorized as of August 4, 1994, preclude subsequent assignment for conflicting allotments. See, *Reconsideration Order*, 8 FCC Rcd at 3257 and note 6 *infra*.

3) The following federal travellers information station criteria, which was agreed upon between the Commission and NTIA, will be used:

(a) All projections are based on the daytime operation of the expanded band station assuming Model I facilities. Section 73.37(f) of our Rules defines Model I facilities as a ninety electrical degree ( $90^\circ$ ) antenna height and ground system and an antenna input power of ten kilowatts daytime and one kilowatt nighttime. Daytime, a Model I facility will produce an unattenuated inverse distance field of 971 mV/m at 1 kilometer. (b) Soil conductivities will be taken from Figure M3 of the Commission's Rules notwithstanding the fact that Section 90.242(a)(2)(i) of our Rules specifies the use of the measured 0.5 mV/m contour in determining the minimum spacing for a federal travellers information station from a broadcast facility. This is consistent with all other computations made in the allotment process and follows the procedures illustrated in the calculation

of the sample allotment plan. Furthermore, this ground conductivity data base produces the needed certainty in the allotment plan and can be used to immediately implement the expanded band.

(c) Federal travellers information station protection will be defined by the distance between the expanded band and federal travellers information station transmitter. For co-channel and first adjacent channel projections, we will use the distances set out in Section 90.242(a)(2)(i) of our Rules: distance to the expanded band station's 0.5 mV/m contour plus 130 km for co-channel; distance to the 0.5 mV/m contour + 15 km for first adjacent channel.

(d) Because Section 90.242(a)(2)(i) discusses second and third adjacent channel protection of broadcast stations by federal travellers information stations, but does not establish standards, standard broadcast engineering procedure will be followed which specifies that second adjacent channels may have no overlap of the 5 mV/m contours and third adjacent channels may have no overlap of the 25 mV/m contours. See Section 73.37(a) of the Rules. Since federal travellers information stations are low power with the 25 mV/m and 5 mV/m contours being close to the federal travellers information station site, we will not permit the proposed expanded band 5 mV/m contour to encompass the federal travellers information station site for second adjacent channel allotments (1630 kHz). Third adjacent channel protection (1640 kHz) is provided if the expanded band station's 25 mV/m contour will not encompass the federal travellers information station site.

4) Existing stations operating on 810, 820, 830, 840 and 850 kHz have the potential to cause interference to stations operating at twice their carrier frequencies, i.e., 1620, 1640, 1660, 1680 and 1700 kHz. Under Section 73.182(s) "[t]wo stations, one with a frequency twice of the other, should not be assigned in the same groundwave service area unless special precautions are taken to avoid interference from the second harmonic of the station operating on the lower frequency." The service area of a station is that area protected from interference, and is defined as the 0.5 mV/m for rural areas in Section 73.182(d) of the rules. An expanded band allotment will be precluded if the service area of an existing station operating on 810 to 850 kHz would overlap the service area of a potential expanded band station operating with Model I facilities as defined in Section 73.37(f) of the rules. In accor-

dance with prior procedures in this proceeding, the service area will be calculated using conductivities taken from Figure M3 of the rules. See, *AM Improvement Order*, 6 FCC Rcd at 6310-6311 and §73.35 of the rules.

5) Allotments will not be proposed that do not maintain co-channel, first and second adjacent channel spacings in accordance with the minimum spacing requirements from existing station operations on 1580, 1590, and 1600 kHz. See, *AM Improvement Order*, 6 FCC Rcd at 6312-6313 and §73.37 (f) of the rules.

(C) The rulemaking notice provided for reduced minimum co-channel spacings for Zone 1 in anticipation of high demand for channels in that zone. See *Notice of Proposed Rulemaking*, 5 FCC Rcd 4381 (1990). In the sample plan, 800 km spacing was used because the Zone 1 level of interest was not high. In developing the Allotment Plan, 800 km spacing was also used for Zone 1 because the level of interest from petitioners in this Zone was again not high, i.e., the proportion of Zone 1 petitioners in the Allotment Plan was the same as for Zone 1 expressions of interest in the sample plan. Accordingly, 800 km spacing will be used for all zones in developing the revised Allotment Plan.

(D) Because international agreement renegotiation would introduce unacceptable uncertainty into the allotment process, we will not seek to renegotiate the terms or technical parameters of any agreement. With the passage of time, the conditions of Article 5 of the Mexican agreement have changed by its own terms. Therefore, proposed allotments will now be considered if it is within 225 km of a negotiated allotment center point as long as the spacings established in the agreement are met.

(E) In computing the distance to the United States-Canadian Border, the border shall be deemed to encompass only a country's land area, which includes its islands. For Mexican border points, the coordinates from the North American Political Boundary file will be used. Use of any other coordinates would require notification to the relevant countries and introduce uncertainty into the allotment process. These files may be obtained from NTIS.

27. *Ordering Clauses.* Accordingly, IT IS ORDERED that the petitions for reconsideration filed in this proceeding ARE GRANTED to the extent indicated herein and are otherwise DENIED; that the application for review filed by Olmsted County Broadcasting Company, licensee of Station KOLM, Rochester, Minnesota IS DENIED; and that the December 3, 1993 Public Notice (Mimeo 40831) and the October 14, 1994 Public Notice (Mimeo No. 50218; DA 94-1154) ARE RESCINDED. IT IS FURTHER ORDERED that the public is afforded thirty days from the date of the publication in the Federal Register of this order to submit requests to change the June 30, 1993-A database; thirty days from the date of the publication in the Federal Register of this order to comment on the allotment plan procedures set forth herein; and fifteen days from the comment date to file replies to the comments.

## FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary